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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/801,786      | 03/16/2004  | Jason S. Erdic       | EPT-15283           | 3106             |

7609 7590 08/24/2007  
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CLEVELAND, OH 44115-1405

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| EXAMINER |
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ELKINS, GARY E

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| ART UNIT | PAPER NUMBER |
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3782

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| MAIL DATE | DELIVERY MODE |
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08/24/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/801,786

Applicant(s)

ERDIE, JASON S.

Examiner

Gary E. Elkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,7-16,34-37 and 39-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 39-42 is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 7, 8,10-16 and 34-36 is/are rejected.
- 7) ☒ Claim(s) 9 and 37 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 4, 7, 8, 10-12, 14 and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by McLeod. McLeod discloses a cylindrical body including mounting openings 41 and an end cap 38 including an openings provided through the circular side wall adjacent to and defining deflectable tab portions 47. With respect to claim 12, note is made that the flange portion of the bottom is considered a handle portion insofar as one can rotate the end cap using ones hands engaging the flange.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over McLeod in view of Boik et al. McLeod discloses all structure with respect to the claimed container except formation of the tube from spirally wound strips of paper. Boik et al teaches that it is known to make tubes from spirally wound paper. It would have been obvious to make the container of

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McLeod from spiral paper as taught by Boik et al since paper is inexpensive, readily available and provides good strength.

5. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over McLeod. McLeod discloses all structure of the claimed container except formation of the body with an inner diameter from about 2 inches to about 7 inches (cl. 15) or with a wall thickness between about .05 inches to about .25 inches (cl. 16). With respect to claim 15, it would have been obvious to make the inner diameter of the tube in McLeod with a diameter between about 2 to about 7 inches as a mere selection of what size container is desired to hold a given size of contents. The ability to size a container to hold a given size of content is within the level of skill in this art. No patentable distinction is seen in the selection of the claimed dimensions over any other common container size. With respect to claim 16, it would have been obvious to make the wall thickness of the container in McLeod about .05 inches to about .25 inches as a mere selection of one common wall thickness over any other. The difference is seen as a mere change in the thickness/size of the walls relative to any other standard wall thicknesses for a tube.

***Allowable Subject Matter***

6. Claims 9 and 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 39-42 are allowed.

***Response to Arguments***

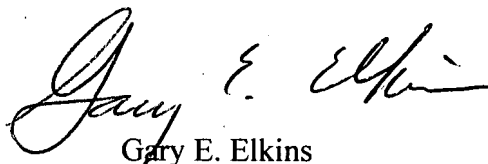
8. Applicant's arguments with respect to the rejected claims have been considered but are moot in view of the new ground(s) of rejection.

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***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

  
Gary E. Elkins  
Primary Examiner  
Art Unit 3782

gee  
20 August 2007